IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1356 of 2006.

Decided on: 11.07.2007.

Executive Engineer, H.P.S.E.B.	**…**	**…**	**Petitioner.**
Versus			
Bhoop Singh and another.	**…**	**…**	**Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner: **Mr. Shrawan Dogra, Advocate.**

For Respondent No1: **Mr. Dharamvir Sharma, Advocate.**

Rajiv Sharma, Judge (oral):

A challenge has been laid by the employer to the award made by the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala, District Kangra dated 22.5.2005.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala:-

> **"Whether the termination of services of Shri Bhoop Singh S/o Sh. Bhagat Ram, daily wages beldar by the Additional Superintending Engineer, H.P.S.E.B., Division Manali, District Kullu, H.P. w.e.f. 20.2.2000 without complying the provisions of the Industrial Disputes Act, 1947 and Clause 14(2) of the Certified Standing Orders of the board, whereas junior to him are retained by the board is proper and justified? If not, what relief of**

Whether reporters of local papers may be allowed to see the judgment? No.

service benefits and compensation the above aggrieved workman is entitled to?"

In sequel to the reference the workman had filed his statement of claim before the Labour Court stating therein that his retrenchment effected with effect from 21st February, 2000 was in violation of Clause 14(2) of the Certified Standing Orders of the Board as well as Section 25-G and H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The Board had filed the reply to the claim field by the workman.

The Labour Court had answered the reference in affirmative on 22.5.2006.

Mr. Shrawan Dogra had strenuously argued that at the time of retrenchment of the workman, i.e. 21.2.2000, the Certified Standing Orders were not applicable and the workman could not seek protection of Section 25(F) of the Industrial Disputes Act, 1947. Mr. Dharamvir Sharma had supported the award dated 22.5.2006.

I have heard the parties and gone through the record.

The workman had worked only for 119 days and on that basis he had claimed the protection of sub-clause 14(2) of the Certified Standing Orders framed by the Board. It is admitted by both the parties that at the time of retrenchment, i.e. 21.2.2000, the Certified Standing Orders framed by the Board were not applicable and the case of the workman was covered under the Industrial Disputes Act, 1947. The workman could have sought protection of Section 25-F or Section 25-N of the Act if he had completed 240 days preceding his retrenchment. Accordingly, the finding recorded by the Labour Court that there was violation of Clause 14(2) of the Certified Standing Orders is erroneous and is liable to be set aside.

The Certified Standing Orders framed by the Board had ceased to apply with effect from the year 1992 and this aspect of the matter has been over-looked by the Labour Court while answering the reference.

The workman had specifically stated in his claim that three workmen, namely, S/Shri Jang Bahadur, Ranjit Singh and Sunil Kumar were retained by the employer who were junior to him at the time of his retrenchment on 21.2.2000. The averment contained in the claim petition with regard to retaining of juniors was not denied by the Management in its reply. The Labour Court ought to have gone into the question whether the persons junior to the workman were retained or not at the time of his retrenchment. It is settled law by now that for seeking protection under Sections 25-G or 25-H of the Industrial Disputes Act, 1947, it is not necessary for the workman to complete 240 days.

Accordingly, the award dated 22.5.2006 is set aside and the Labour Court is directed to enter into the reference afresh by considering all the pleas raised by the workman and the Management pursuant to the reference made by the State Government. To avoid delay, the parties are directed to make themselves available before the Labour Court on 14.8.2007. The workman is permitted to lead evidence to substantiate his plea as taken in the statement of claim.

(Rajiv Sharma)
Judge

July 11, 2007
(sck).